3-96.

Revenue (1898) Department.

MISCELLANEOUS SERIES.

G.O., No. 2662

DATED 22nd June

[Despatch Abstract.]

Stating that the 'dasabhagam cess' collected by D. Citambaram from the ryots under the 'Gollati Kottus' should be regarded as a dasabandam inam and that the full cist assessment now levied from the ryots should be reduced by the amount of the cess levied from them.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Con 2871/97							

Charge of the Record-keeper.

O
18 19-7-97.

Revenue (1897) Department.

CURRENT No.

From
Nimali Pichi Reddi & others
Manchikallu
Palnad Taluk
Kistna Dist.

No.

Order Misc

The Govt sees no reason to interfere on behalf of the petitioners.

Mlle 17/11/98

Dated 29 Nov.
Received 3 Dec
Registered 4 "
Enclosures
Spare copies.

To the petrs.
Mk
15/1

SUBJECT.

Praying that they should be exempted from either paying the water-rate or Basabandham.

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

To the Governor

I have no doubt that what the Dasabhagam Cess connected with D. Sivaramudu is a Dasabandham Swam. As it is well put by the Secretary, a private agreement between the ryots & Sivaramudu's father in 1826 could not bind the successors of the ryots for ever, as the lands. The tank is not a Govt tank, & cannot be taken like the inam assumed; and the inam cannot be resumed like the inam dar fails to keep the tanks in proper repair. It follows that the ryots ought not to pay the full land-tax to Govt; but the land-tax minus the Cess. Orders ought to be issued accordingly. The question whether the ryots shd pay the full land-tax or not was not considered when G.O. 215/21 4619/16.11.96 was passed, though R.C. 21/5/97.

Read again G.O. 20 dt. 23.5.96.
4619
16.11.96.
C.No 10441 of 97
C.No 60 of 98

For orders.

Please see notes under G.O. 20 dt 23.5.96 and 4619 dt 16.11.96.

2/ The ryots holding lands under certain dasabandham tanks in the Kistna District were paying in addition to the full wet assessment due to Govt, a cess called 'dasabhagam' (ie one tenth of the outturn of the crop) to the dasabandhars who were maintaining the irrigation works. In August 1893, the Board of Revenue recommended that the levy of the dasabhagam cess should be discontinued and that the Govt should take up the maintenance of the irrigation works. This was approved in Govt order No 809 dt 12.9.93. One D. Sitaramudu of Mandali Kallu who had been collecting the

the Cess in question from the ryots holding lands under an irrigation work named Goleti Katwa having been affected by this order, first put in a review petition and then an appeal to the Govt of India. Thereupon a reference was made to the Collector and it was found from his reports that there were not sufficient grounds to warrant the interference of Govt with the arrangement under which the Control and the repair of the Goleti Katwa had been hitherto carried out. The order of 1893 sanctioning the discontinuance of the Collection of the dasabhagam Cess was therefore cancelled so far as it affected the levy of the Cess on the ayacut under the Goleti Katwa. and the Collector was directed not to interfere with the Inamdar's Collection of the Cess or to

It was mentioned in the Office Note. The question whether the Cess could be allowed to continue or not was the only question raised in the proper disposal of

JG
20/5/96

The inamdar must be required to execute the repairs

JG

I thought the Hon. Member's view of the case.

5.6.96

to prevent his repairing the bank as might be necessary. (Go 461 dy 16.11.96)

In the present current, the some of the ryots under the Goleti Katwa ask for a reconsideration of the last mentioned order. They urge that it is hard that they should be made to pay the full water rate to Govt and an additional 'dasabhagam' cess to the dasabhandar. and they pray that they may be exempted from the payment of either of these

In para 4 of his letter printed in G.O. No 809 dy 12.9.93, the Collector observed as follows:

"It seems probable that the Govt water rate on ayacut under these works was "according to the old paimash rates fixed after making the necessary deductions "for payment of dasabhagam cess to the dasabhandars. But in "Settlement no such de deductio

to

This was a long time after Kurbin's case under Resettlement Act.

"deduction seems to have
"been made, and the ryots
"pay the full tax to Govt
"and additional watercess
"to the dasabandhandars."

Having regard to this fact, the question was specifically raised in the previous note under Ejo. No 4619 dy 16.11.96. whether 'Govt "should not allow the "ryots concerned a re. "mission of assessment "equal to the ~~Cess~~ cess "collected from them by the 'dasabandhandars.' The Hon'ble member re. marked that "there is no "need to change the "~~Com~~ long continued cus- "tom."

"In these circumstances it is submitted that the petition may be dismissed. A draft order is put up on the docket of the current for approval.

17/11/98

Mr 15/1 Is there any legal objection to the resumption of the water cess by Govt assuming the maintce of the tanks &c

Please see next sheet for Regd &c

Regd R dy 6.

This appeal against [illegible] question [illegible] should be granted whether ryots or not was not considered.

JG

Attention is respectfully invited to para 4 of the note under Ejo No 4619 dy 16.11.96 in which the question raised by the Secretary has been discussed. The Collector seems to have thought (his letters have been returned to the Board of Revenue) that the irrigation work was a Govt work and that as Govt was collecting the full wet assessment, on the ayacut the duty of repairing it must be taken up by Govt. The Collector's grounds for calling the work a Govt work were not deemed conclusive and from the fact that it was the dasabhandar and not the Govt that executed repairs to the work during the last 60 years, it was inferred that the 'dasabhandar cess' the right to levy which was established in Courts of law, was mea- to

ble a remuneration to the Inamdar for the trouble and expense of keeping the work in repair and that neither the irrigation work nor the right of collecting the cess could be resumed unless it was proved that the work was not kept in repair.

Mr 24/11/98

Mr 21/1 Secy

The question seems to be whether the terms of the agreement are that the so-called Inamdar has a right to collect the cess (1) so long as the tank is he is required to keep kept in repair or (2) that the tank is kept in repair. If (1) then, if Govt does not require him to keep the tank in repair but does the repairs itself, he cannot claim to collect the cess. If (2) he can claim the cess as long as he keeps the tank in repair.

It appears to have been [illegible] that the tank

There seems to be no evidence as to who constructed the tank & it seems clear that the so-called Inamdar has always repaired it. In the circumstances, it seems to have been decided that Govt could not take over the tank & dispense with the services of the so-called Inamdar (vide note flagged A under G.O. 4863 & 16 Nov 96)

It is to be presumed that the so-called Inamdar get a benefit out of the contract i.e. that the cess yields him a surplus after the cost of repairs is deducted. He has been enjoying this for many years & if Govt now took over the tank in the absence of any proof that it is a Govt tank, the so-called Inamdar would probably have a remedy at law.

[illegible]
31.12.96

Please put up for 3 May 1897
No 451 B.W.D., Memorandum of Plans
Rs. 8581/24-10-95 Rs. 5748 P.T.C.

Please see papers tied separately with a red tape.

MK
9/2/98

Subsp P.O. No 311 d. 11th March 1880 quoted in the M. of 24 Feb 1895 d. (= 4908 / 20.11.95 Rev)

V.P.

Was any reference made to the treatment of these dasabhagam lands in the settlement of the Kistna

S.F. 5-3.8

The papers relating to the Settlement of the Masulipatam and Guntur portions of the Kistna District were gone through but no reference to the inam in question is traceable. Attention is however invited to para 4 of the Collector's letter printed in page 1 of G.O. No 809 of 12.9.93. in which he says as follows:—

" It seems probable that the
" Govt water-rate on ayacuts
" under these works was according
" to the old paimash rates
" fixed

P.

[illegible]

[illegible]

8/3

No reference was found in the papers connected with the G.O. quoted by the petitioner

" fixed after making the
" necessary deductions for the pay-
" ment of the dasabhagam cess to
" the dasabandhamdars. But in
" settlement, no such deduction
" seems to have been made, and
" the ryots pay the full rate
" to Govt and additional water-
" cess to the dasabandhamdars".

MK
19/3/98

Hon'ble.

This appeal of the ryots
raises a most difficult
question as to the bound-
aries of the decision of
Govt in G.O.
16 Nov 1896 No 4019, which, in
reversal of a previous order,
permitted the levy of this
"dasabandam cess" without
allowing the ryots holding
lands in the ayakat of
the work any corresponding
deduction
of assessment.

It may have been omitted on the part of the collector in the first instance to let sleeping dogs lie: but

for

that the question has been agitated, & we cannot well think going to the root of the whole matter, especially as it seems pretty certain that the parties will appeal to the Courts.

The decision of Nov^r 1896 proceeded on the ground that the "cess" had been paid as a long continued custom & that for 3 Y^rs. therefore not interfere. It was contended urged in the discussion that the right to collect the cess had been upheld by the Civil courts.

Apparently, but I am not quite sure, Govt. took the view that the right to collect the cess was not in the nature of an inam, but rather in the nature of a private arrangement which owing to its long establishment for 3 Y^rs. we should not interfere with.

see para 4 of file note
in Pol. 23 May 1896 no 2014-R

This view if it is held cannot I think be defended. If the payment of the cess was a contract between the original claimant & the ancestors of the ryots could it bind the land? I think not. Suppose the Govt sold the land under the revenue law for arrears can it be pretended that this liability, in its origin personal, passed by the sale? In the absence of the assent of the Govt. or of some legislative measure authorizing such a cess no right, which would exclude the interference of Govt., to collect such a cess can, it is submitted, attach to the land. The decision of the Civil courts in favour of the claimant was given in a suit between him & the ryots; to that suit Govt. was no party. Govt not having intervened, that decision was, quoad hoc, of right; for a, in the view I

I take, that the so called cess was nothing more than an inam, the decision merely meant that the courts recognized the inamdar's right to collect this share of the produce or asst to which the grant by the ruling power entitled him.

Nor can I find any reason why the so called cess shd be regarded as other than an inam, & to be treated as an inam

In the enclosure to the Kistna Collectors letter at p. 2 of G.O. 12 2pt. 93 no. 809 R. this Manchikalla dasabandam is entered as levied at "one tenth of the outturn of the crop". Sir Thomas Munro in a extract printed in D.P.W. Ro. no 855 I.D. 24/10/95 (G.O. 20/10/95 no. 1708) in writing about the dasabandham tanks in the Ceded Distts says the "inam is usually an eighth or tenth of the Sircar share of the produce"; & the Inam Comm.r (p 2 of same G.O.) in deciding such inams into two classes describes the Shamilat dasabandam &c as "allowances as inam of a certain proportion of each year's cultivation under the work in question".

Dasabandams are so common all over India that there is no reason to assume that it was anything else. The essential elements of the tenure are present, and although its particular historical origin may be obscure the Courts will not hesitate to presume that the right claimed by the person who collects the "cess" was other than this well known form of grant from the ruling power, subject to the conditions of such a grant.

In his petition in C.P. 16 March 95 no 1123 the Manchikalla Dharma-Karta admits that the collection of the "cess" was "with the permission of the authorities"

It is possible that the Govt by inaction or misre-

to

may have lost the legal right as against the holder of the dasabandam to enforce completely some of the conditions, which I do not wish for a moment to see supposed that I do see any ground for such a conclusion. But even if this were so, it would not give the inamdar any stronger position against the Ryots than the grant alone has. This is the important point to which I wish to come, & the reason for my insisting, at probably unnecessary length, on the recognition of this case as an "inam pure & simple."

The ryots it will be observed appeal against passing both this case a full assessment.

Now if the we are dealing with a dasabandam inam the claim on the ryot for both these payments is I take it wholly indefensible.

An inam in its very nature is an assignment of either the whole or some portion of the Govt's share of the produce or its equivalent the money assessment. The Govt has nothing else to give. It cannot impose, except by legislation or the ordinary revenue laws of the country, any liability upon its ryot to pay more than the govt share of the produce. The ryot may of course bind himself by voluntary contract to make any return he pleases; but as I have endeavoured to show above any voluntary contract made by former ryots will bind the land, & the present holders thereof; & even if this is be done, it is immediately defeated by a revenue sale, the obligation to pay not reviving except by a fresh voluntary contract. Nor can custom make legal such a payment unless it has a "legal origin", & the only "leg-

---

* The entry "no inams" in the tabular statement in Sp. Proc. 12 Sept 93 no 809 R. is evidently to be interpreted as 'no land inams': but it is elementary principle that an inam or grant need not be appurtenant to any specific & permanent plot of land, it is an inam provided it is an assignment by the Govt of a portion of its land revenue

S.V.

* The Revenue Board's notes on Sir T. Muthuswami Ayyar's letter of 20th Nov. 96 is grounded on a statement that they take Whether contract, custom or inam. S.V.

I doubt whether

an origin' one can think of is to a grant by the ruling powers the of a portion of the assess.t, in other words, the grant of an inam.

for As I have said the inam e must be some portion of the a goot's share of the produce or, 2 its equivalent, the money ass.t & because govt has nothing else to give. I think Mr Atkinson's views in his letter of 29 June 93 to in Jo. 12 Sept.r 93 no doy R explains a the portion prior to the settlement of 1872 " para 4. It seems reprobable that the govt water rate on ayacuts under these works was "according to the old painash "rates. after making the necessary "deductions for the past & dasabhagam "fees to the dasabandaners."

When the new settlt was made in 1872 it is admitted that the existence of these dasabhagam claims was overlooked, at any rate there is not the slightest reference to them in Settlement Papers which I have carefully perused (vide Jo. 16 May 1872 & Nos Jos in that bundle). The consequence was that the land was fully assessed.

But the only source from which the inam can issue is the full assessment, for it is a grant of a portion of it. And if Govt appropriates the whole assess.t, whence is the dasabandandar to get his inam? The ryot is not bound to pay more than the full assess.t; & if the existing arrangement continues whereby the inamdar collects his assigned portion of the assess.t direct from the ryot, then the ryot is entitled to a corresponding remission. Before the new settlt was introduced the painash rate, as Mr Atkinson believes & I think correctly, allowed for the main deductn But now that the full assess has been imposed & applied

by Govt, apparently in ignorance of the existence of this Govt, it does not seem ~~[illegible]~~ justifiable that the ryot shd pay both the full assessment & also the inamdar's ~~pan~~ allowance.

So long therefore as the inam is continued & paid by the ryot direct, I wd give him an equivalent reduction of his assessment.

The North Arcot Valavadi tenures are not precisely on all fours, but there the Govt made a division of the waterrate between itself & the Valavadi inamdar (GO 18 Rp 82 no 396 R)

The inamdar shd at the same be told that if he fails to maintain the tank in repair, the main will be resumed. His tenure is clearly subject to all the conditions of a dasabhandam inam. To the purpose in the circumstances the Govt was not a party, & do not affect the tenure which in reality they merely recognized.

S.K. 25/5/98

A draft order is put up on separate sheet below for approval. It seems to be, however, a matter for consideration whether the propriety of the order directing the discontinuance of the cess and the resumption of the irrigation works in the other cases (besides the one now in question) mentioned in the B.P in Go. no 809 d 12.9.95 should not ~~also now~~ be reconsidered in the light of the principle now enunciated. If the inamdars in those cases had been maintaining the irrigation work in repair there can be no just case for resumption of the inams or the discontinuance of the cess.

elk 13/6/98. Secy

I have discussed this ~~misapprehension~~ matter

For orders

13.VI.98

Read again G.O. 4619
16.11.96.
C.R.O 10441 of 1897.
(Petition from V. Pichi reddi & others. Kistna Dist dt 29.11.97)

G.O. Misc No. 2662 dt 22nd June 98.

After a careful consideration of the case, H.E. the Governor in Council has come to the conclusion that the 'dasabhagam cess' collected by D. Sitaramudu from the ryots under the 'Goleti Kotwa', must be construed as a dasabandam inam granted for the upkeep of that irriga tion work. It follows that the ryots whose liability to pay the cess was practically recognized in G.O. No 4619 dated 16.11.96 should not be made to pay the full wet assessment on the land to Govt but that such assessment should be reduced by the amount of the cess levied from them.

The Collector is accordingly requested to issue the neces sary instructions to the Collr

that the irrigation work is maintained in proper repair by the inamdar on pain of resumption.

2. The petrs will be referred to the Board of Revenue for orders on their petition.

Mly
18/6/98

(from orders) 18/6/98

To the Board (L.R.) with petn
To the petrs (thro' Collr) who returned Encd 24/6/98

Mlk
13/6/98

PETITION

OFFICE OF THE CHIEF SECRETARY
1 DEC 1897
GOVERNMENT OF MADRAS

His Excellency, the
Governor in Council
Madras

The humble memorial of
the undersigned of Manchikalla
Palud taluq
Kistna District

May it please your Excellency

With due deference and submission, Your petitioners most humbly and submissively beg leave to draw up the following for Your Excellency's kind interference and disposal

Your Excellency was pleased to prohibit the ——— of Seetaramasawmy Manchikalla

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

When copied
When examined
When signed
189

2. The Dharmakarta Dheekonda Seetaramudu having applied to Your Excellency, this order has been revoked, and the Dharmakarta has been allowed to collect "Dasabandhamu" (vide Your Excellency's proceedings No 4619 of 16.11.96) which was carried into effect by the Board Proceedings No 5299 of 27.11.96; and this has been communicated to the parties by the Collector's order No 1573 of 11.12.96.

3. Against this order mentioned in para 2, the petitioners humbly beg leave to put the

4. They have been paying separate water-rate to Government and also village road-cess of about Rs 500/-

5. The Dasabandhamu yearly amounts to

to pay water-rate &c, to Government and "Dasabandhamu" to Dharmakarta.

7. Formerly they were not paying water-rate

8. Your petitioners deserve to be exempted from either the water-rate or Dhasabandhamu.

9. There are Jammie days. In addition to the Jammie they have been made to pay water-rate to Government and Dasabandhamu to Dharmakarta,

10 The petitioners beg to submit that this is quite against justice and law. They cannot be made subject to both. Your Excellency cancelled the Dasabandhamu in Kondagunta, Kotcherla

r in full.
= Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

making the festivals of the Swamy.

12. The petitioners are put to a serious loss of justice.

On all these circumstances the petitioners humbly implore Your Excellency to be merciful to reconsider the question and pass orders to the effect that they should be exempted from either the water rate or Drainage charges.

For such act of Kindness they will ever remain Your Excellency's most Obedient Servants

29/11/1897

hen given for copying
hen copied
hen examined
hen signed
} 189

D AGAIN G.O., No. DATED
189 ,

JUDGMENT No.

ENCLOSURES TO G. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR IN ORIGINAL.

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.

To

The Secretary to Government
Revenue Department
Fort St. George

Madras

Sir

I have the honour to forward herewith a petition addressed to His Excellency the Governor in Council praying for exemption from payment of water rate and drainage charges in respect of the premises mentioned therein.

I have the honour to be
Sir
Your most obedient servant
[illegible]

Madras
22.6.98.